The opinion in support of the decision being entered today was *not* written for
publication and is *not* binding precedent of the Board
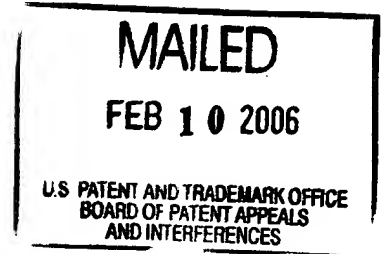
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte TROY ALAN USSERY
JEFFREY DOUGLAS BALCOMBE and
DEAN RUCINSKI

_____

Appeal No. 2006-0046
Application 09/694,425

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ON BRIEF

_____

Before KRASS, RUGGIERO and BARRY, *Administrative Patent Judges.*

KRASS, *Administrative Patent Judge.*

This is a decision on appeal from the final rejection of claims 1-20.

The invention pertains to electronic-commerce systems, wherein companies communicate

with interested parties, best illustrated by reference to representative independent claim 1,

reproduced as follows:

    1. For use over a global communications network having company nodes and
constituency nodes associated therewith, an electronic commerce system comprising:

a data repository that is operable to store data files associated with said company nodes, wherein said company nodes populate respective associated data files with company information; and

a communications controller that is operable to (i) propagate communication interfaces accessible by said constituency nodes with selected portions of said company information under direction of said company nodes, and (ii) gather feedback information representative of constituency response to said constituency nodes accessing said communication interfaces.

The examiner relies on the following references:

Holzrichter et al. (Holzrichter)	5,729,694	Mar. 17, 1998
Thompson	6,393,410	May 21, 2002

Claims 1-20 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner offers Thompson with regard to claims 1-5, 8-15, and 18-20, adding Holzrichter with regard to claims 6, 7, 16, and 17.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

<u>OPINION</u>

At the outset, we note that, in accordance with appellants' grouping of the claims at page 5 of the principal brief, and lack of specific argument to particular elements of other claims, we will focus on only claims 1 and 6, since claim 1 is a representative claim of group A, consisting of claims 1-5, 8-15, and 18-20, and claim 6 is representative of the claims of group B, consisting of claims 6, 7, 16, and 17.

In rejecting claims under 35 U.S.C. §103, it is incumbent upon the examiner to establish a

factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071,

1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the

factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459,

467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have

been led to modify the prior art or to combine prior art references to arrive at the claimed

invention. Such reason must stem from some teachings, suggestions or implications in the prior

art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal,

Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert.

denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc. ,

776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986);

ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir.

1984). These showings by the examiner are an essential part of complying with the burden of

presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445,

24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the

applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then

determined on the basis of the evidence as a whole and the relative persuasiveness of the

arguments. See Id.; In re Hedges, 783 F.2d 1038, 1040, 228 USPQ 685, 687 (Fed. Cir. 1986);

In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart,

531 F.2d 1048, 1051, 189 USPQ 143, 146-47 (CCPA 1976). Only those arguments actually

made by appellants have been considered in this decision. Arguments which appellants could

have made but chose not to make in the brief have not been considered and are deemed to be

waived [see 37 CFR §41.67(c)(1)(vii)].

Looking, first, at independent claim 1, the examiner applies Thompson as follows:

The use of the Internet by Thompson is said to be the claimed "global communications

network." The claimed "company nodes" are said to be taught by Thompson by a disclosure of

the owner of a project, such as an architect or contractor. The claimed "constituency nodes" are

said to be taught by Thompson by a disclosure of a purchaser, such as a contractor or engineer,

and that these "constituency nodes" are associated with the "company nodes." The claimed

"data repository" is said to be taught by Thompson at column 2, lines 40-45, in that data files

associated with the company nodes are stored. The examiner says that these company nodes

"populate respective associated data files with commercial information, because they hold

information about the construction projects. The examiner points to Thompson's processor 20 as

the claimed "communications controller" and contends that it is operable "(I) to propagate

communications interfaces accessible by said constituency nodes with selected portions of said

commercial information (i.e., the construction project) under direction of said company nodes

(col. 3, lines 29-36), and (ii) gather feedback information (i.e., the response of the sub-

contractors) representative of constituency response to said constituency nodes accessing said

communication interfaces (col. 4, lines 20-49)" (final rejection, Paper No. 5, pages 2-3).

The examiner concludes that it would have been obvious "to utilize the system disclosed by Thompson to disseminate any type of information in any industry" (final rejection, Paper No. 5, page 3).

Appellants acknowledge that Thompson is broadly directed to an electronic commerce system for use over a global communications network, such as the Internet. Appellants also acknowledge that Thompson is directed to a process for estimating construction projects over the global network, wherein a construction bidding scheme enables a party controlling a construction project to post a request for a proposal for all or a portion of the construction project, and wherein the information relating to the construction projects is sold to purchasers who request the information (principal brief-page 7).

Appellants argue that, in contrast to the present invention, Thompson sells information to purchasers and that, using the purchased information, the purchasers (contractors, sub-contractors) may or may not submit responses that relate to the construction project in question. It is appellants' view that Thompson allows the controlling party to have supervisory control over acceptance or rejection of the response that is received from the purchaser of the construction project information.

We do not find this argument persuasive of nonobviousness since instant claim 1 does not include or preclude anything about information being "sold." While the claim does recite some supervisory control in the language of "selected portions of said company information under direction of said company nodes," the examiner reasonably points to the language of column 3,

lines 29-36, of Thompson, indicating supervisory control in accepting certain quantities.

Appellants argue (principal brief-page 3) that once the information in Thompson is

purchased by the purchasers, it is owned by the purchasers and is not subject to further control or

modification by the controlling party who sold the information to the purchasers. We agree with

the examiner (answer-page 6) that the claim recites that information is under the "direction" of

the company nodes, but there is no recitation of a controlling party retaining control of the

information after sale to purchasers. Therefore, since appellants' argument is not commensurate

with the claim language, it is not persuasive of nonobviousness of the claimed subject matter.

Appellants argue that Thompson fails to teach or suggest a data repository populated with

"company information" by the company nodes. However, as broadly claimed, it appears to us

that the examiner is correct in asserting (by referring to column 2, lines 40-45, of Thompson) that

Thompson's "company nodes," represented by the architect or contractor, present a construction

project over a computer network (column 2, lines 36-39) and that the data repository for

information relating to that construction project or projects meets the claimed "data repository"

since Thompson's data storage device 25, database 30, and a series of web pages 35 obviously

provide information regarding the construction projects presented by the "company." Thus, as

broadly claimed, we find that Thompson does, indeed, teach a "data repository populated with

company information by the company nodes."

Appellants argue that Thompson does not teach or suggest the claimed "communications

controller operable to propagate communication interfaces accessible by constituency nodes with

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selected portions of the company information under direction of the company nodes." But, as explained by the examiner, reasonably in our view, users for each project in Thompson upload information on the project to a network accessible data repository/database (column 1, lines 23-43; column 2, lines 40-44; and Figure 2). Then, "these project(s) under control and direction of the project supervisor transmits via a communications controller the interfaces (i.e. browsers), which consist of the selected portions of the stored information to constitutes [sic] such as contractors" (Abstract; column 3, lines 30-34; and Figures 1-3). (see answer-pages 5-6).

As for the claimed feature of "gather feedback information representative of constituency response to said constituency nodes accessing said communication interfaces, we again agree with the examiner that, as broadly claimed, Thompson suggests this limitation in that constituents/contractors "would have provided feedback by first purchasing the information as well as providing bid information" (answer-page 6). While the examiner recognizes that Thompson's disclosed invention may be different from that disclosed and intended by appellants, the examiner points out the overly broad nature of the *claimed* invention by showing that Thompson discloses a structure capable of performing the same functions as the claimed invention. Appellants have not provided us with any basis for reversing the examiner.

Where appellants argue that the present invention does not provide for selling the company information to purchasers, because the company information is owned by the company, it is not clear as to what specific claim language such an argument is directed. Similarly, when appellants argue that, in Thompson, the distribution of information occurs only after the

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information has been paid for by the purchaser; that Thompson's system operates as a sales tool for selling information; and that an important aspect of the instant invention is the ability of the company node to control when publication of at least selected portions of the company information stored in the data repository is available to constituencies, the specific claim language upon which appellants rely for these arguments is not clear. Nothing in claim 1 is concerned with withholding publication of company information.

When the examiner points out that the specific data in the claimed "data files" is irrelevant to the claimed subject matter, appellants argue that the content of these "data files" is very pertinent to the function of the claimed invention. Appellants state that "Unlike the 'construction project data' disclosed in the *Thompson* reference, the term 'company information' refers to information about a specific company that is represented by a specific company node..." (reply brief-page 9). Again, appellants' assertions as to what the claimed "company node" entails is unconvincing because no such description occurs in the claim and the examiner has asserted a broad, yet reasonable, interpretation of the term. No applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim. In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978), In re Prater, 415 F.2d 1393, 1405, 162 USPQ 541, 551 (CCPA 1969). We also note that the language of claim 1 is not in "means plus function" form, which would activate the sixth paragraph of 35 U.S.C. §112. We find that the examiner was reasonable in asserting that the broad term "company node" includes, in Thompson, the project information stored by the architect/contractor in the first instance.

Because of the broad nature of the subject matter of instant claim 1, the examiner's

reasonable application of Thompson's teaching thereto, and appellants' unpersuasive arguments

(referring to disclosed, but not claimed, subject matter), we will sustain the examiner's rejection

of claim 1, and of claims 2-5, 8-15, and 18-20, falling therewith, under 35 U.S.C. §103.

With regard to claim 6, this claim adds the limitation that a security controller includes an

interactive voice recognition controller that is operable to verify the identity of said designated

personnel. The examiner recognized that this was not taught by Thompson, but relied on

Holzrichter for the teaching of speaker identification, language-of-speech identification, and

speech translation, holding that it would have been obvious to utilize the teachings of

Holzrichter, regarding speaker identification, etc., to "provide Thompson's systems with the

capability of being accessed by those denied use of their hands and thereby precluded from using

a conventional computer terminal" (final rejection, Paper No. 5, page 4).

Appellants argue that the examiner's rationale for making the combination, viz., access

by those denied use of their hands, is faulty because it is "too general and vague to provide the

requisite motivation to modify a reference" (principal brief-page 11).

The examiner's response is to argue that the artisan would have found the combination

obvious since Thompson teaches an authentication of a user whereby the user must enter a

password and the system structure also includes a security controller (column 4, line 9), and

Holzrichter discloses a system structure which includes an interactive voice recognition

controller that is operable to authenticate the identity of personnel (column 5, lines 1-7).

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Therefore, argues the examiner, the skilled artisan would have been led to extend the system of Thompson with a system including the structure of a voice recognition controller operable to authenticate the identity of personnel (answer-pages 8-9).

The examiner's rationale appears reasonable to us. The primary reference teaches a concern for security (user ID and password) and the secondary reference teaches another way which may be used to log on to a system, viz., voice recognition. It appears reasonable to us that the skilled artisan would have found it equally obvious, from these teachings, to log on to a system by using voice recognition or user ID/password.

Accordingly, we will sustain the rejection of claim 6, and of claims 7, 16, and 17, falling therewith, under 35 U.S.C. §103.

Since we have sustained the rejection of claims 1-20 under 35 U.S.C. §103, the examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(2004).

AFFIRMED

ERROL A. KRASS)
Administrative Patent Judge)
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JOSEPH F. RUGGIERO) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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